

REMARKS

Claims 1-18 are pending in this application.

General Considerations

Conventional sleeping bags are commonly adapted for a narrow range of temperatures, e.g. either 1) cold temperatures or 2) mild temperatures, but not both. Mummy bags, for example, are shaped with a lateral taper to approximately contour the body of a user to decrease air movement within the bag to thereby conserve heat. As a result, mummy-type sleeping bags are well suited for use in cold ambient temperatures. Rectangular bags, while generally more spacious than mummy bags, are thermally inefficient because of their larger internal volume. As a result, rectangular bags are well suited for use in mild temperatures.

Applicants' sleeping bag, in contrast, is adapted for use in a wide range of temperatures, from cold to mild. In one embodiment, applicant's bag has an elongate, tapered shell with at least one vent in an overlying portion of the shell that is selectively adjustable between opened and closed positions. When the vent is closed, the bag conforms to the contours of a user so that air movement within the sleeping bag is minimized making the bag thermally efficient (Fig. 1). Thus, the sleeping bag is well suited for use in colder ambient temperatures. When the vent is open, the internal volume of the shell is increased and a vent opening is created which allows communication with outside air and circulation within the bag (Fig. 4). Thus, the sleeping bag of the present invention is also well suited for use in mild to warm ambient temperatures. In addition, the

internal volume of the shell can be adjusted by opening and closing the vent, which allows the user to adjust the sleeping bag to conform to their fit preference. For example, if the user prefers a sleeping bag with less foot room (i.e., a mummy-type bag) the user can close the vent. However, if the user prefers more foot room (i.e., a rectangular bag) the user can open the vent.

Rejection of Claims Under 35 U.S.C. § 103(a)

Claim 1

Claim 1 is directed to a vented sleeping bag comprising:

a) an elongate shell defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end; left and right sides extending longitudinally of the shell, an overlying portion adapted to overlies said user and an underlying portion adapted to underlie said user;

b) a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

c) at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell; and

d) a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

Applicants submit that claim 1 is patentable over U.S. Patent No. 5,881,405 (Garrigues) in view of U.S. Patent No. 6,175,976 (Cantwell) in that these references fail to show or suggest a vented sleeping bag having **at least one vent in the overlying portion of the shell located adjacent the foot end of the shell** between the left and right sides of the shell.

Cantwell discloses a sleeping bag (10) having, as indicated by the Examiner, a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag. Cantwell fails to disclose or suggest a vent and thus, clearly fails to disclose or suggest at least one vent in the overlying portion of the shell.

As shown in Fig. 1, Garrigues discloses a bivouac sack (10) having a top (14), a bottom (12) and an end piece (16). An opening (40) in the end piece (16) cooperates with a vent duct (30) and a latitudinal opening (20) in the head end (18) to circulate air throughout the sack for venting and extracting internal moisture from the sack (10). Column 5, lines 7-30. The entire opening (40), as shown in Figs. 3, 4, and 7B, is disposed in the end piece (14), i.e., no portion of the opening (40) is positioned in the top (14) or bottom (12) of the sack (10). Thus, the top (14) of Garrigues' sack (10), which overlies the user, is free of any opening in the foot end. In other words, Garrigues does not show or suggest **a vent on the overlying portion of the shell** (i.e., the portion of the shell adapted to overlie the user).

Paragraph 6, page 8 of the Office action, asserts that the opening (40) is a vent and Garrigues therefore discloses a vent located on the topmost half of the bivy sack and overlying

(i.e., is positioned vertically above) the user. Applicants respectfully disagree. A vent is "an opening or hole for the escape or passage of something (as of a gas or liquid) or for the relief of pressure within something (as a boiler)".

Webster's Third New International Dictionary Unabridged 2541 (2002). As shown in the marked-up copy of Fig. 4 of Garrigues * attached as Exhibit A, the vent of Garrigues is actually the gap, indicated by the red V, formed between the foot vent cover 44 and the end piece 16 of the sack 10. This gap is what allows fluid communication between ambient air and the air within the bivy sack. As illustrated in Fig. 7B of Garrigues, the vent of Garrigues is clearly not positioned on the portion of the shell adapted to overlie the user. Instead, the vent of Garrigues is positioned on the portion of the sack adapted to be horizontally spaced from the feet of the user.

Both Garrigues and Cantwell fail individually to teach or suggest **a vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell.** Thus, the combination of Garrigues and Cantwell also fails to teach or suggest this element of claim 1. Since obviousness can only be established if every claim element is taught or suggested by the prior art (see MPEP §2143.03 citing In re Royka, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974)), claim 1 is nonobvious and patentable over Garrigues in view of Cantwell.

Applicants further submit claim 1 is patentable over U.S. Patent No. 2,234,546 (Basch) in view of Cantwell in that both of these references fail to show or suggest **a vented sleeping bag having a closure selectively moveable between a closed position**

for closing at least one vent and an open position for creating a vent opening.

As shown in Fig. 1, Basch discloses a coverall garment (1) for babies having a body portion (13), a hood (5), sleeves (2), and a bottom (3). The body portion (13) has a longitudinally extending slide fastener (4) that can be moved between a closed position, and an open position for allowing access to the interior of the skirt portion (15), e.g., for changing the baby's diaper, placing a baby within the garment (1), or removing the baby from the garment. As illustrated in Fig. 6, the slide fastener (4) can be mounted such that the slide closes the slide fastener by moving it from a location near the neck (7) of the garment (1) towards the bottom (3) of the garment. Thus, the slide fastener allows access to the skirt portion (15) in order to change the baby's diaper without having to open the upper portion of the garment.

However, Basch does not disclose or suggest that the opening for accessing the skirt portion (15) of the garment can be used as a vent. In fact, Basch teaches away from a vent in the skirt portion. Basch states that "One of the primary objects of the invention is to simultaneously provide a *completely closed bag for the feet and legs* to prevent the baby or other person using same from becoming cold or kicking off the covers..." Column 1, lines 41-45, *Emphasis added*. Accordingly, Basch fails altogether to disclose or suggest a vent and a vent closure as required by claim 1. As a result, Basch's coverall garment lacks **a vent and a closure selectively movable between a closed position for closing the vent and an open position for creating a vent opening**, as recited in claim 1.

Cantwell, as mentioned above discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag. Cantwell (like Basch) also fails to disclose or suggest **a vent and a closure for a vent selectively movable between a closed and open position**, as recited in claim 1.

Basch and Cantwell, whether considered alone or in combination, fail to teach or suggest **a closure selectively moveable between a closed position for closing at least one vent and an open position for creating a vent opening**. As stated above, obviousness can only be established if every claim requirement is taught or suggested by the prior art. Accordingly, claim 1 is nonobvious and patentable over Basch in view of Cantwell.

Additionally, neither Basch nor Cantwell suggests the desirability of making the necessary modifications to the prior art devices to obtain the applicants' invention. The Federal Circuit has repeatedly warned that to imbue a skilled artisan with knowledge of an invention, when no reference of record conveys or suggests that knowledge, is to fall victim to the "insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *W.L. Gore & Assoc. v. Garlock, Inc.*, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The fasteners of Cantwell and Basch are both used for allowing access to and from the interior of the bag and garment, respectively. Thus, why would one of ordinary skill in the art be motivated to add the fastener of Cantwell to the garment of Basch since Basch already discloses a fastener for allowing

access to the interior of the garment? Applicants agree with the Examiner that Cantwell and Basch disclose "functionally equivalent way[s] of providing means of egress and entry." Thus, at most, one of ordinary skill in the art would be motivated to use either the fastener of Cantwell or the fastener of Basch to provide entry into and exit out of bag or garment. But one of ordinary skill in the art would clearly not be motivated to use both on the same bag or garment since doing so would be redundant. Thus, there is no motivation or suggestion to combine Cantwell with Basch.

Moreover, Basch expressly teaches away from its combination with Cantwell. As described in lines 41-53 of column 1, Basch's coverall provides a bag for the user's feet and sleeves for the user's arms. The sleeves "allow the occupant more freedom of action than sleeveless sleeping bags, for instance, and to keep the occupant from becoming twisted around in the bag, which might otherwise be dangerous to infants". Column 1, lines 47-50. Since it is improper to combine references where the references teach away from their combination, *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983), the combination of Basch with Cantwell, which discloses a sleeveless sleeping bag, is improper.

For all of the above reasons, claim 1 is submitted as patentable over the references of record, including Garrigues, Basch, and Cantwell, since these references fail individually and collectively to disclose or suggest all of the features recited in claim 1.

Claims 2-10 and 18 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Claim 8, which depends directly from claim 7 and indirectly from claim 1, further recites that the shell tapers toward the foot end of the shell when the closure is in its closed position and that the edges of the shell defining the vent are separable when the closure is in an open position to expand the inner volume of the shell adjacent the foot end of the shell. Thus, this claim is directed to one feature of the present invention wherein the sleeping bag can be converted from a tapered bag (e.g., a mummy-type bag) to a bag with a larger interior volume (e.g., a rectangular bag) and vice versa by opening and closing the vent.

Claim 8 is further patentable over the prior art including Basch, Cantwell, and U.S. Patent No. 2,622,248 (Schaye) in that whether considered alone or in combination the references fail to teach or suggest a vented sleeping bag wherein the shell of the sleeping bag tapers toward the foot end of the shell when the vent closure is in its closed position.

As indicated by the Examiner at paragraph 4, page 6 of the Office action, Basch and Cantwell fail to disclose a garment or sleeping bag that tapers toward the foot end when the vent closure is in a closed position.

Schaye fails altogether to disclose or suggest a vent. As illustrated in Figs. 1 and 6, Schaye discloses a child's snow-suit that can be converted into a bunting (or sleeping bag). In the configuration shown in Fig. 6, slider 88 can be used to join two short stringers 56, 58 to form the back B of the bunting (Fig. 7) and the front F of the bunting can be formed by using sliders 86, 90 to join two long stringers 52, 54. The sliders 86, 88, 90 can be adjusted to fully or partially separate the

stringers 52, 54, 56, 58 for allowing the caregiver access to the interior of the bunting, for putting the bunting on a child, or taking the bunting off a child. Nowhere does Schaye disclose or suggest a vent for venting the bunting. Thus, the bunting of Schaye clearly does not taper toward the foot end of the bunting when the vent closure is in a closed position since Schaye fails to disclose a vent closure.

For these additional reasons, claim 8 is further patentable over the references of record including Basch, Cantwell, and Schaye.

Claim 11

Claim 11 is directed to a vented sleeping bag comprising:

a) an elongate shell defining a inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user, and an underlying portion adapted to underlie said user;

b) a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

c) at least one longitudinal vent in said overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell; and

d) a closure selectively movable between a closed position for closing said at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

To the extent claim 11 includes the same recitations as claim 1, it is patentable for the same reasons. Claims 12-17 depending from claim 11 are also believed to be patentable.

CONCLUSION

In view of the foregoing, allowance of the application is respectfully requested. The undersigned requests a telephone call from the Examiner if this would expedite allowance of the application.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Michael G. Munsell".

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Express Mail Label No. EV 455483555 US
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5,881,405

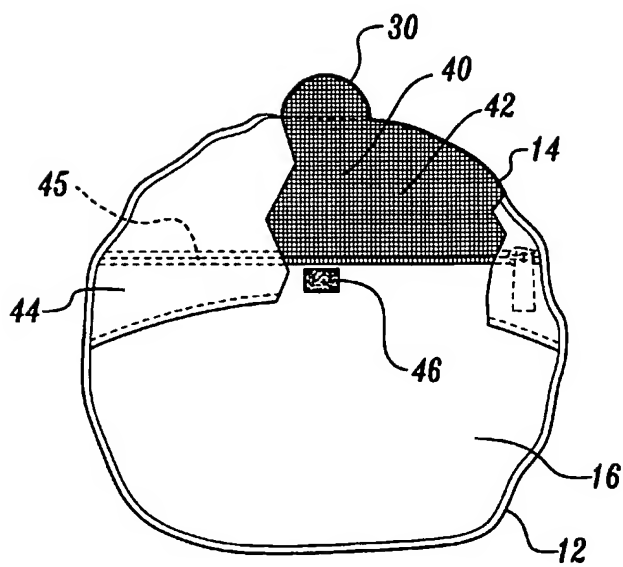


Fig. 3

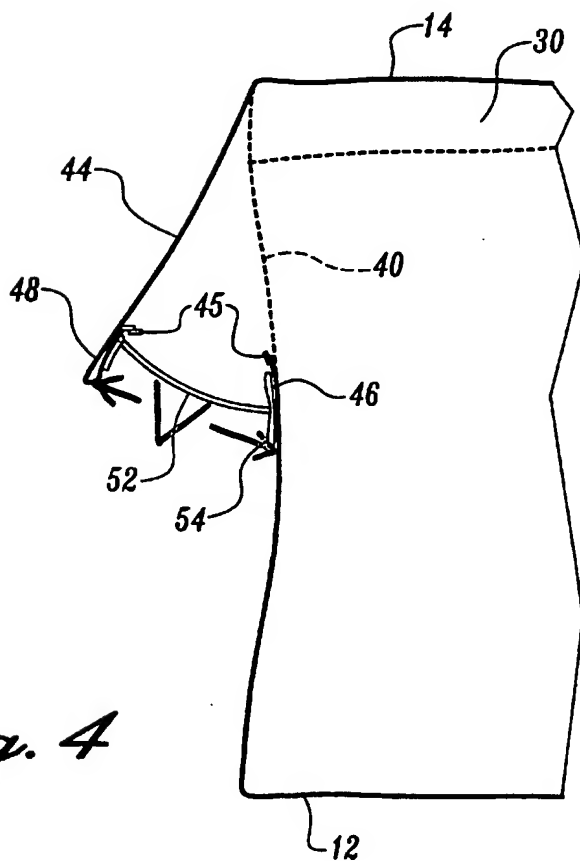


Fig. 4

